

1 THURSDAY MORNING SESSION, JULY 24, 2003

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3 THE COURT: All right. We're here on
4 Case No. 435700, the State of Ohio vs. Cordell Hubbard,
5 Ru-el Sailor, and Nicole Hubbard.

6 Are you Mr. Cordell Hubbard?

7 DEFENDANT CORDELL HUBBARD: Yes, your
8 Honor.

9 THE COURT: You're Mr. Ru-el Sailor?

10 DEFENDANT SAILOR: Yes, your Honor.

11 THE COURT: And you're Ms. Nicole Hubbard?

12 DEFENDANT NICOLE HUBBARD: Yes.

13 THE COURT: You're here with your
14 respective attorneys.

15 Mr. Watson, where did Mr. Mack go? He was
16 here a moment ago. Would you ask Mr. Mack to come on
17 out?

18 Okay. And Mr. Mack is here for sentencing
19 purposes.

20 It's my understanding Mr. Mancino is here
21 for Appellate and post-trial motions on behalf of
22 Mr. Sailor.

23 And finally, we have Mr. James Willis here on
24 behalf of Ms. Hubbard.

25 On behalf of the State of Ohio, we have

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1 Maureen Clancy.

2 I have a motion to amend the indictment filed
3 by the State of Ohio.

4 Any objection, Mr. Watson?

5 MR. WATSON: Yes, your Honor.

6 THE COURT: Go ahead.

7 MR. WATSON: I'd just indicate that I
8 did review the motion that was faxed over to me last
9 night. I reviewed it and looked at cases relative to
10 the motion to amend. Certainly that the State of Ohio
11 cited in the code section that -- the code section in
12 which they cited was a conspiracy statute. I tried to
13 see where this idea of complicity to commit an offense
14 would otherwise cause an enhancement in sentence, and I
15 couldn't find any cases whereby a person had been
16 charged with a substantive offense and was charged with
17 complicity for the same offense, particularly in this
18 case where the theory was that Cordell Hubbard acted in
19 complicity. And I would suggest to the Court that he
20 was found not guilty on the aggravated murder on the
21 complicity theory, that if she now wants to change the
22 conspiracy charge which she's charging Mr. Hubbard, or
23 wants to change it to complicity, I think at that point
24 you have an inconsistent verdict.

25 But at this time we object, your Honor, and

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1 we believe that's out of rule, and certainly that any
2 complicity to commit a substantive offense, there should
3 be a lesser degree of penalty, irrespective of the
4 language relative to 2923.03(F), which indicates that
5 the person should be treated as a principal offender,
6 but complicity, in our judgment, has to be attached with
7 a substantive offense.

8 Thank you.

9 THE COURT: Mr. Mack, do you have anything
10 you would like to add to that?

11 MR. MACK: Yes, your Honor. I was not
12 served with those motions. I have no idea what they're
13 talking about.

14 THE COURT: Mr. Mancino, were you served
15 with that, the motion to --

16 MR. MANCINO: Yes, it was left at the
17 office last night. And I would reiterate and adopt what
18 Mr. Myron Watson stated.

19 THE COURT: All right. Mr. Willis, do you
20 have anything you would like to add?

21 MR. WILLIS: Yes. I certainly object to
22 the State trying to alter the case at this late date.
23 And this is post verdict. Admittedly the rules allow
24 for an amendment, but I think more of a showing is
25 required, and certainly we ought to have an opportunity

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1 to respond.

2 On the other hand, I'm not seeking to have
3 this -- the sentencing delayed, but I would like to
4 reserve the right to file a post-sentencing motion
5 related to that because I have some theories with
6 reference to the ability of the State to charge somebody
7 with felony murder, and then particularly when they were
8 not there, and we know from the evidence that the
9 evidence is frail so far as they haven't shown that
10 Nicole was -- aided and abetted somebody in doing
11 something to a person that was killed. At best -- and
12 I'm assuming that the evidence -- I'm relating on the
13 evidence that was presented -- at best, that evidence
14 allows for a belief that there was some animus from --
15 generated by her directed towards a different person,
16 not the person who was ultimately killed.

17 And when I read the prosecutor's statement, it
18 would -- I mean brief, in which she suggested there was
19 some animus against both people, there's nothing in the
20 record that supports that theory, and I need to file an
21 adequate response.

22 THE COURT: Ms. Clancy, do you have
23 anything you would like to add to your motion?

24 MS. CLANCY: No, your Honor. Just that
25 this issue was raised on July 7th by the defense, number

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1 one.

2 And number two, basically what their argument
3 is, it's sufficiency of the evidence and not whether or
4 not this is complicity or conspiracy, rather, it's a
5 typographical error or not.

6 Rather, as I outlined in my brief, it's clear,
7 under Criminal Rules 7(B) and (D,) that the State is
8 permitted to amend the code section of the indictment at
9 this time, and it's clear from all the evidence that I
10 alluded to in my brief that there was no misleading the
11 jurors, no misleading the defendants, no misleading the
12 defense counsel or the Court that we were trying Cordell
13 under a complicity theory. It was clear that it was
14 complicity by the reading of the indictment in the
15 beginning of the trial, by any of the arguments made at
16 the end of the trial, by all of the evidence that was
17 produced during trial.

18 THE COURT: The motion to amend the
19 indictment is granted. All those counts that say
20 complicity will be amended to 2923.03, in place of the
21 2923.01. I find it is a typographical error most
22 likely, and furthermore, that the offenses -- the
23 language in each of those counts was indicative of
24 complicity -- or aiding and abetting and did not mention
25 complicity.

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1 And I note all of your objections from the
2 defense side.

3 All right. Now, we also have in the case of
4 Mr. Ru-el Sailor, count thirteen, the having the weapon
5 under disability, which was tried to myself, I find the
6 defendant not guilty.

7 And we have with respect to Nicole Hubbard,
8 count fourteen, which is also having a weapon while
9 under disability, I find her not guilty.

10 All right. And now why don't we begin with
11 Mr. Cordell Hubbard.

12 Mr. Watson, what would you like to say --
13 here's how I propose we do it, have each attorney, then
14 their client, speak, and then the State can speak as to
15 all three defendants, and any representatives of the
16 victims' family may speak.

17 Mr. Watson.

18 MR. WATSON: Thank you, your Honor.

19 Is it the Court's intention to hear the motion
20 for a new trial at a later day or --

21 THE COURT: Yes.

22 MR. WATSON: -- or just address --

23 THE COURT: Yes.

24 MR. WATSON: I would just indicate that
25 Mr. Hubbard, prior to this incident, had no felony

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1 criminal history at all.

2 I'm not going to belabor the point. The
3 Court heard all the evidence in this case, and the jury
4 made its verdict.

5 Certainly I think some consideration has to
6 be given relative to the sentencing requirements of
7 Mr. Hubbard, in light of his age and his lack of
8 criminal history, your Honor.

9 I think that the evidence, and the theory of
10 the State's case, was ultimately that he didn't shoot
11 anyone and that he acted in complicity by being
12 present. But there was no testimony in this case
13 relative that he pulled the trigger or actually hit
14 anyone with his hands.

15 We just hope that the Court would factor that
16 into this scenario and that there was some mitigating
17 factors, not blaming the victim or the victim's family,
18 but there were some mitigating circumstances that
19 brought about this event, which was a very unfortunate
20 event. And I think that Mr. Hubbard would like to
21 address the Court as well.

22 THE COURT: Mr. Hubbard, what would you
23 like to say?

24 DEFENDANT CORDELL HUBBARD: First, your
25 Honor, I would send my condolence to the victim's

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1 family, you know.

2 I would also like to apologize to Ru-el
3 Sailor's family, to my sister.

4 Your Honor, there's a lot of things that the
5 Court doesn't know, that my lawyer doesn't know. Ru-el
6 Sailor wasn't present and -- this night when this took
7 place. It was a guy named Will.

8 THE COURT: I'm sorry, say that again. A
9 guy named --

10 DEFENDANT CORDELL HUBBARD: A guy named
11 Will.

12 THE COURT: And what's his last name?

13 DEFENDANT CORDELL HUBBARD: Your Honor, I
14 don't know. We have a picture of him, though. It was
15 me and Will there, and I -- you know, and I -- I kept --
16 I -- you know, because I didn't think it was going to
17 turn out like this, I didn't think my best friend was
18 going to get convicted as the shooter, but he wasn't
19 even there, you know.

20 THE COURT: And how can Detective Metzler
21 find Will?

22 DEFENDANT CORDELL HUBBARD: Your Honor, my
23 understanding, they send indictments, I could tell you
24 where he at, the house where he stay at.

25 THE COURT: Go ahead.

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1 DEFENDANT CORDELL HUBBARD: I even talked
2 to him, you know, and tried to get him to come down here
3 and tell the truth, you know.

4 THE COURT: Well, why don't you tell us
5 now where he could be found, where he works, where --

6 DEFENDANT CORDELL HUBBARD: He works at
7 Bottom Line there on 68th and St. Clair. I don't know
8 the correct address. I got a cell phone number. As a
9 matter of fact, the cell phone number was --

10 THE COURT: I'm sorry, the cell phone
11 number is what?

12 DEFENDANT CORDELL HUBBARD: Was presented
13 in this Court, 323 -- 323-0607, and that was his cell
14 phone number. And at the time, I didn't even know it
15 was -- I -- I didn't even -- I didn't know that until I
16 found out. That's why I tried to keep it up under my
17 hat, because like me and you just together, I'm like,
18 damn, I ain't know -- excuse my French -- I didn't know
19 it was a brother or nothing like that.

20 And Ru-el Sailor didn't play a part in this,
21 your Honor. Truthfully, I just told him that -- the day
22 we got convicted of all these charges, I told them in
23 the bullpen, you know, like, "Man, I was there, man, you
24 know," and I told them, like, I was going to tell my
25 lawyer --

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1 THE COURT: You were present at the time of
2 the shooting?

3 DEFENDANT CORDELL HUBBARD: Yes, I was,
4 your Honor.

5 THE COURT: And are you telling me that
6 Will did the shooting?

7 DEFENDANT CORDELL HUBBARD: No, I'm telling
8 you if you find Will, you will find everything was going
9 to come out, the whole truth, everything was going to
10 come out.

11 THE COURT: Well, if you were there, who
12 did the shooting?

13 DEFENDANT CORDELL HUBBARD: Your Honor, I
14 would just like to say if you found Will, your Honor, it
15 will come out. His cousin is the baby mama, you know.

16 THE COURT: That was discussed during the
17 trial.

18 DEFENDANT CORDELL HUBBARD: Yes. You
19 know. And a lot of things going to come out. The truth
20 is going to come out, your Honor.

21 That's -- that's what I would like to say.
22 That's it.

23 THE COURT: All right. Thank you.

24 Mr. Mack, on behalf of your client,
25 Mr. Sailor.

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1 MR. MACK: Your Honor, might I address this
2 matter?

3 THE COURT: You may.

4 MR. MACK: Your Honor, in going to trial
5 the evidence came out that none of the descriptions --
6 and you know I harped on that throughout the whole
7 trial -- none of the descriptions of the two men that
8 were there at that particular night ever reflected that
9 this particular gentleman, outlined on the report or
10 everything else, the whole scenario -- and I do believe,
11 your Honor, that's why it's kind of hard for me to stand
12 here and say -- what can I say to this honorable court
13 to show some remorse for this? Because, of course, the
14 Court is looking for that in any sentencing. But if a
15 person is truly not there, and I still maintain that,
16 and I think Mr. Mancino filed a subsequent brief that
17 this Court did find that he was not there that
18 particular night, and I thought that the jurors came
19 back, you know, with a verdict that was incorrect. I
20 don't know based on -- what they based their decision
21 on. But again, I still say that he wasn't there, your
22 Honor.

23 I do believe he has some additional
24 information. And I do have a picture.

25 THE COURT: Of Will?

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1 MR. MACK: Yes, I do.

2 THE COURT: All right. Well, if you could
3 present that to Detective Metzler.

4 MR. MACK: Is there anyone else I can
5 present it to, your Honor?

6 THE COURT: You can present it to myself.

7 MR. MACK: I will do that, your Honor.

8 THE COURT: All right. All right. What
9 would you like to say, Mr. Sailor?

10 DEFENDANT SAILOR: Your Honor --

11 MR. MANCINO: May I --

12 THE COURT: Oh, I'm sorry. Yes, go ahead.

13 MR. MANCINO: Just following up with what
14 Mr. Mack said, Mr. Hubbard didn't know the last name of
15 Will, but I believe his name is William Sizemore,
16 S-I-Z-E-M-O-R-E. As a matter of fact, I issued a
17 subpoena for him. One subpoena was issued to 10625
18 Columbia Avenue, Cleveland, Ohio, 44108, and that's
19 the --

20 THE COURT: Slow down just a little bit.
21 What's that address again?

22 MR. MANCINO: 10625 Columbia Avenue,
23 Cleveland, Ohio, 44108. And that was the address that
24 the Court -- the Common Pleas Court has of him, because
25 he's on probation, as far as I can tell, still on

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1 probation to Judge Nancy Fuerst. I have the -- the
2 docket there that he's on probation.

3 I also issued another subpoena for him, in
4 care of the Bottom Line Bar, 1087 Old River Road,
5 Cleveland, Ohio, and I've called out there and no one
6 has responded this morning, but he was issued to be here
7 on July 24th, 2003.

8 And he -- he's got two or three convictions,
9 but I think he's only on probation to the last one. I
10 want to get the -- the last number is Case No. CR-417003
11 that he's still on probation to Judge Nancy Fuerst for a
12 drug possession case. The last entry is on January
13 21st, 2003, where he was on a probation -- or community
14 control violation hearing. The Court found him in
15 violation but continued his probation. So, you know,
16 he's under the Court's jurisdiction. He hasn't appeared
17 pursuant to my subpoena.

18 And as Mr. Hubbard has indicated, the Will is
19 that Will who was there, and from the trial evidence,
20 the Will who was there said, you know, something to the
21 effect, "Do not shoot," or "Do not shoot him because
22 somehow the person is related to my baby's mother," or
23 some -- something in that regard, which would support
24 the claim that Mr. Sailor was not the one doing the
25 shooting, that he was not there.

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1 And I think it's corroborated, and I think,
2 you know, that -- you know, at this point it would be a
3 manifest injustice to state that in these circumstances,
4 given the evidence and what Mr. Hubbard told Mr. Sailor
5 after the verdict in the case concerning this matter,
6 which has been corroborated by him in open court, that,
7 you know, his conviction should not stand, because I
8 believe from what is presented in speaking to the
9 attorneys here that this would be an injustice, and, you
10 know, someone who is truly not guilty of the offense is,
11 you know, facing a substantial sentence in this case
12 when he had no participation, did not do anything, and
13 was not even present, your Honor.

14 THE COURT: What would you like to say,
15 Mr. Sailor?

16 DEFENDANT SAILOR: I would just like to
17 say, I send my condolences to you and his family and
18 Omar's kids' mother. You know what I'm saying? Because
19 I'm a father and a son and a brother to somebody, too.
20 And I'd like to apologize to the Court.

21 But I would stress my innocence from the
22 beginning, that no -- but nobody listened to me at all,
23 nobody.

24 THE COURT: Mr. Willis, on behalf of Nicole
25 Hubbard.

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1 MR. WILLIS: Your Honor, the Court has, of
2 course, heard all of the evidence, and the Court is
3 aware of the neatness of the testimony involving this
4 lady and her alleged participation. I feel that
5 inasmuch as the Court has -- still has before it a
6 judgment -- a motion for a judgment of acquittal, that
7 this situation will rectify itself.

8 But if the Court feels that it will sentence
9 her today, I'm hopeful that the Court will recognize
10 that her involvement comes down to whether or not she
11 had a phone call with her brother, whether or not she
12 identified somebody. And the person that was identified
13 is not the person who was killed. So to the extent that
14 the State takes the position that somehow she was
15 involved in the shooting of a different person, at least
16 her participation was meek, and to that extent, I feel
17 the sentence imposed on the defendant should be on the
18 bottom and it should all be concurrent.

19 THE COURT: Thank you, Mr. Willis.

20 Ms. Hubbard, what would you like to say?

21 DEFENDANT NICOLE HUBBARD: First off, I
22 would like to send my condolence off to the family who
23 lost a loved one and to the families that -- my brother
24 and Ru-el Sailor. And I'm sorry for using my phone or
25 whatever and making a phone call. And I would just like

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1 to thank the Court.

2 THE COURT: On behalf of the State of
3 Ohio.

4 MR. THOMAS: Your Honor, we would like
5 to defer our comments until after the family has
6 spoken.

7 THE COURT: Sure.

8 Sir, would you come forward, please? Because
9 of the court reporter, it's difficult to hear from the
10 back of the courtroom.

11 Okay. Would you mind standing at the podium,
12 sir?

13 MR. CLARK: Your Honor --

14 THE COURT: And just for the record, could
15 you tell us your full name and spell your last name?

16 MR. CLARK: My name is Umar Clark,
17 C-L-A-R-K, U-M-A-R.

18 THE COURT: Mr. Clark.

19 MR. CLARK: From November 17th, 2002,
20 you know, I been living on my toes, you know what I'm
21 saying, because of Nicole Hubbard and Cordell, you
22 know.

23 After all this happened, I talked to
24 Cordell. He lied, told me, "Man, you know I wasn't
25 there, man, I'm your dude," you know what I'm saying,

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1 and this and that.

2 I couldn't -- I wasn't allowed to come in the
3 courtroom, you know, just to see this. And knowing that
4 my brother's assailants was in here, and the whole time
5 they laughed, they showed no remorse, they laughed, they
6 smirked and -- you know, like this was a joke. And all
7 of a sudden this, you know, have mercy and this and
8 that. Cordell, you know, if it wasn't for him or his
9 sister, this man wouldn't even be here, if it wasn't for
10 him and his sister. And if it wasn't for him and his
11 sister, we wouldn't be here.

12 My brother has took -- has lost his life,
13 and now they play and gamble on another man's life,
14 which was his friend. How can the Court have mercy and
15 leniency on a man who gambled on his best man's life?
16 You know, he gambled.

17 THE COURT: Thank you, Mr. Clark. I
18 appreciate you coming forward.

19 MR. THOMAS: Mr. Clark, Sr.

20 THE COURT: Good morning, sir.

21 MR. MATHIS: Good morning.

22 THE COURT: Would you please state your
23 name and spell your last name for the record?

24 MR. MATHIS: Rasheem Mathis, M-A-T-H-I-S.

25 THE COURT: Mr. Mathis, what would you like

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1 to tell me?

2 MR. MATHIS: I would just like to say that
3 since November 16th, you know, my life has changed in
4 more ways than one.

5 THE COURT: What's your relationship to
6 the --

7 MR. MATHIS: My brother.

8 THE COURT: That's your brother who died?

9 MR. MATHIS: Yes. I'm the youngest
10 brother. I lost a big brother. I lost a friend. My
11 family lost a loved one, you know, my brother lost. The
12 baby's mother, the baby, she lost a father.

13 I want to say that it was a very senseless
14 act on all three of you all parts. It was no -- it's no
15 excuse. It's -- it's no way to explain why would you
16 kill a man like that? And for \$10 or what have you,
17 whatever it may have been, you know, my brother is
18 dead.

19 And these three, they sitting here, life,
20 looking at a long time in prison, you know.

21 Like Ru-el said, he got kids, you know. He
22 won't see his kids, hopefully he won't, you know.

23 I just want to say that every day that you
24 all spend in prison, I want you to think of Omar. I
25 want you to think about how you gunned him down that day

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1 for no reason. I want you all to think about him every
2 day until your sentence is up.

3 As far as Ru-el go, him not being there, I
4 feel like it's a puzzle. Everybody played a part
5 somehow, some way, some fashion, somebody played a
6 part. He may not have did the shooting, but he was
7 there on the scene, just like this Will guy and so
8 forth. So all of them need to face the consequences,
9 because they was there. He had knowledge of it. It was
10 his best friend. He need to face the consequences with
11 the rest of them.

12 I also would like to thank the Court for
13 everything you all done as far as trying this case and
14 so forth, you know. I just hope that you all give him a
15 stiff -- stiff sentence.

16 THE COURT: Thank you, Mr. Mathis.

17 MR. MATHIS: Thank you.

18 THE COURT: Ma'am, could you please tell
19 us your full name and spell your last name for the
20 record.

21 MS. BROOKS: Pamela Brooks, B-R-O-O-K-S.

22 THE COURT: Ms. Brooks, what's your
23 relationship to the deceased?

24 MS. BROOKS: Omar is my brother.

25 THE COURT: What would you like to tell

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1 me?

2 MS. BROOKS: I would just like to say that
3 that was a senseless and a very selfish act to shoot
4 anybody like that, even a wild animal, you know. He had
5 life.

6 My brother's greatest goal in life was to
7 become a father. He has a little baby that he will
8 never see grow up. This child will never know her
9 father. He could never hold her in his arms, play with
10 her, you know? All these things was taken away.

11 And at this late date in the game, how could
12 they come forward now and state that this young man had
13 no part in this? I don't understand that.

14 But we are not the only people here with a
15 loss to our families. Each and every one of their
16 family members has also sustained a great loss. And I
17 think it was a senseless act.

18 And I also would like to thank the Court for
19 listening.

20 THE COURT: Thank you, ma'am.

21 Sir, would you please state your name and
22 spell your last name for the record.

23 MR. SIMPSON: Kenneth Simpson,
24 S-I-M-P-S-O-N.

25 THE COURT: Mr. Simpson, what's your

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1 relationship to the --

2 MR. SIMPSON: Friend.

3 THE COURT: You're a friend of his?

4 MR. SIMPSON: Yes, sir -- yes, ma'am.

5 Only thing I want to say is, you know, I spoke
6 to Cordell, you know what I'm saying, and he told me he
7 had nothing to do with it, and he wasn't there. You
8 know what I'm saying? That's a friend of mine,
9 also. And it was wrong the way they killed my friend,
10 you know? You don't kill nobody like that. I mean,
11 have mercy on somebody, I mean, come on. All those
12 times they shot him, it was wrong. He told me he had
13 nothing to do with it. He looked me in my face. And he
14 had no mercy, you know what I'm saying, flat out.

15 So I feel the Court should do what they
16 need to do. You know what I'm saying? These people
17 suffering.

18 That man, he couldn't even hold his baby. You
19 know what I'm saying? That's all he had, was a child,
20 and they took that from him. It ain't right, your
21 Honor.

22 That's all I got to say.

23 THE COURT: Thank you, Mr. Simpson.

24 Good morning, sir.

25 MR. FRED MATHIS: Good morning.

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1 THE COURT: You're Omar's dad?

2 MR. FRED MATHIS: Yes. I'm Omar's father.

3 THE COURT: Could you tell us your full
4 name and --

5 MR. FRED MATHIS: My name is Fred Mathis.

6 THE COURT: Okay. Mr. Mathis, what would
7 you like to tell me?

8 MR. FRED MATHIS: Well, I sat through the
9 whole trial, and I think the prosecutor should have --
10 they proved their case, you know, as far as I'm
11 concerned, with all the evidence. To me it was beyond
12 a reasonable doubt. I -- I imagine some little
13 discrepancy here and there, but basically I think that
14 they -- they -- the jury was correct in bringing back
15 the guilty verdict on -- on the ones they brought it
16 back on.

17 Now, I'm wondering why, through the whole
18 trial, nothing of this nature was mentioned or
19 anything. If they had something to say, looked to me
20 they would have said it before their conviction. And
21 now the conviction, it seems like they trying to find
22 some kind of escape route, trying to make their sentence
23 less or whatever. But why come up with it now? I think
24 they had ample enough time to bring this information
25 forward before the jury reached a verdict, before the

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1 trial is over. Now the trial is over and -- and they
2 come in here with everything.

3 So I can't do nothing. I go along with what
4 the prosecution proved, and I go along with the jury's
5 verdict of the individuals they brought it back on. I
6 go along with that.

7 And I hope the Court will carry it out just,
8 you know, like the jury brought back, because it was a
9 long -- you know, it was a very tiresome trial.

10 And then after the trial, they going to come
11 up with this? No, he didn't do it, I did it, and I'm
12 the one did the shooting? Well, why not say that before
13 the sentences, before they brought back the guilty
14 verdict?

15 That's what I want to say. And --

16 - - - - -

17 (Thereupon, a discussion was had off the
18 record.)

19 - - - - -

20 MR. FRED MATHIS: Yes. Omar, he's my son,
21 like you say. And I love my son. My son look like he
22 had -- he had turned his life around, you know? He
23 had a child. He was working every day. And then his
24 little daughter -- he had a little daughter by his
25 fiancée and they had nice plans, and I was behind him

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1 100 percent. And we had come close -- I was right on
2 him because I want him to stay on the right track.

3 And he was, until that fateful day that he
4 wandered back down there on 105th Street, which he had
5 stopped even associating down there, but that day he
6 went. So I don't know.

7 And I do know -- I don't think my son was
8 involved with the -- the wet and all of that, that part
9 of it, because I think he came up as an innocent person,
10 not knowing the circumstances of what was going on
11 between Nicole and Dude, or whoever the other guy was,
12 about the wet. I think he came in blind and he didn't
13 really know what was happening and -- and after it all
14 happened, I mean, when they came down there, he didn't
15 feel that he had no need to run or to -- you know, he
16 was only trying to make peace, you know, because even he
17 hadn't did nothing to Nicole. Nicole knew he hadn't
18 done anything to her.

19 And I don't understand why -- I think that she
20 could have prevented his killing by whoever she made
21 that phone call to, her brother or whoever, but to say,
22 "Well, Omar didn't have anything to do with it. It was
23 me and Dude that was bugging. Omar was just there."
24 And maybe it would have spared his life. You know? But
25 I guess she was so distraught about being beat and all

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1 that out of some money that she just included him, too,
2 because he was all right with this other guy, you know.
3 And I think it's a little too late now to come up with
4 that.

5 And I just hope the judge consider all the
6 evidence that was -- which I know you will in your
7 sentences. And that's all I got to say.

8 I think it's -- the way the trial went down,
9 the verdict and everything, I think it's a just verdict,
10 and I think it's -- I don't think that verdict need to
11 be turned around any, not now. If they had anything to
12 say, I think they should have said it before the
13 conviction. That's all.

14 THE COURT: Thank you.

15 MR. FRED MATHIS: I would like to thank the
16 Court.

17 THE COURT: Thank you, Mr. Mathis.

18 Ma'am, would you please state your name and
19 spell your last name.

20 MS. SIZEMORE: Marquetta Sizemore,
21 S-I-Z-E-M-O-R-E.

22 THE COURT: You need to speak up.

23 MS. SIZEMORE: Marquetta Sizemore, last
24 name spelled S-I-Z-E-M-O-R-E. First name,
25 M-A-R-Q-U-E-T-T-A. And I'm Omar's fiancée.

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1 THE COURT: What would you like to tell
2 me?

3 MS. SIZEMORE: Because of all this, like
4 December 13th, he had another baby on the way that he
5 won't get to see. I lost that baby because of this.

6 THE COURT: I'm sorry.

7 MS. SIZEMORE: My daughter will never
8 get to see him because all three of you, all of them,
9 are cowards. Especially you. All of you are
10 cowards. But because of this, he won't get to see his
11 child. You all -- you can -- your kids can come visit
12 you and everything. She won't know what her daddy --
13 from pictures she will know what he looked like. She
14 won't be able to hold her father, nothing. None of
15 that. But you all still walking around here free,
16 whoever the shooter was.

17 They need to get the death penalty for that,
18 whoever the shooter was.

19 If you wasn't there, you should have never
20 came down here and lied. You shouldn't have lied. I
21 don't know if you was there or not, Ru-el, but if you
22 were there, you need to get the same thing, just like my
23 cousin, if he was there at all -- all of you -- all of
24 you all are guilty, as far as I'm concerned.

25 But you, you the main one. You're the

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1 coward. You started all this. You could have stopped
2 that, whoever made the phone call. You could have
3 stopped that. If Omar didn't have nothing to do with
4 that, you could have told him that. But you want to
5 take the cowardly way out, just like these other two.

6 And so I hope you all get what you got
7 coming.

8 That's all I have to say.

9 THE COURT: Thank you, Ms. Sizemore.

10 Mr. Thomas.

11 MR. THOMAS: Thank you, your Honor.

12 Your Honor, it's very difficult to be more
13 eloquent than the family members have been today,
14 especially Mr. Umar Clark and Mr. Mathis, the father of
15 the victim. They bring out some very good and obvious
16 points about the proceedings in this matter.

17 And I would state that prior to the final
18 reindictment of this case, the State did make repeated
19 overtures to both Defendants Cordell and Nicole Hubbard
20 as to a willingness to provide information, and we were
21 rebuffed at our return. It was only through the hard
22 work of the Cleveland Police Department Homicide Unit
23 that the investigation was concluded as to the identity
24 of the shooter of Omar Clark.

25 And the jury heard all the evidence through

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1 vigorous cross-examinations as to identity and reached
2 its conclusion, and we stand by the theory presented at
3 trial, that Ru-el Sailor is, in fact, the shooter on
4 that night.

5 We also would point out that through Ru-el's
6 testimony, he admitted to being present with Cordell the
7 entire time of that night. He never said that he was
8 absent from Cordell, if you recall his testimony.

9 THE COURT: I do.

10 MR. THOMAS: And I would also point out
11 that it was apparent to everyone in the trial that the
12 remorse that you're seeing today was never present, that
13 there was a lighthearted attitude from all the
14 defendants, that there was banter and taunts from the
15 defendants' table to the family members of the victim
16 during the course of the trial.

17 All of those things that we all observed
18 during the course of the trial belie the statements that
19 were made to you today by each of the defendants.

20 And we would ask you to consider, as we know
21 you will, the fact that there are two victims in this
22 case, not only Omar, but Clark Williams. And we know
23 that your sentence will be just.

24 Thank you.

25 THE COURT: All right. Mr. Cordell

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1 Hubbard, this is your sentence.

2 Count two, complicity in the commission of
3 aggravated murder, twenty years to life, plus a one-year
4 gun specification sentence.

5 Count three, murder, fifteen years to life,
6 plus a one-year gun specification.

7 Count four, complicity to commit murder,
8 fifteen to life, plus the one-year gun specification.

9 Count five, kidnapping, three years, plus one
10 year for the gun specification.

11 Count six, complicity in kidnapping, three
12 years, plus one year for the gun specification.

13 Count seven, kidnapping, three years, plus one
14 year for the gun specification.

15 Count eight, complicity in kidnapping, three
16 years, plus one year for the gun specification.

17 Count nine, felonious assault, two years, plus
18 one year for the gun specification.

19 Count ten, felonious assault, two years, plus
20 one year for the gun specification.

21 Count eleven, complicity to felonious assault,
22 two years, plus one year for the gun specification.

23 Count twelve, complicity to felonious assault,
24 two years, plus one year for the gun specification.

25 Counts two, three, and four merge for

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1 sentencing.

2 Counts five and six, counts seven and eight,
3 counts nine and eleven, and counts ten and twelve merge
4 for sentencing.

5 Counts ten and twelve will be served
6 concurrent to one another but consecutive to counts
7 two, three, four, five, six, seven, eight, nine, and
8 eleven.

9 Counts two, three, four, five, six, seven,
10 eight, nine and eleven will be served concurrent to each
11 other.

12 All the gun specifications will be served
13 concurrently to the other gun specifications.

14 Mr. Ru-el Sailor, count one, aggravated
15 murder, twenty years to life, plus three years for the
16 gun specification.

17 Count two, complicity to aggravated murder,
18 twenty to life, plus three years for the gun
19 specification.

20 Count three, murder, fifteen to life, plus
21 three years for the gun specification.

22 Count four, complicity to murder, fifteen to
23 life, plus three years for the gun specification.

24 Count five, kidnapping, three years, plus
25 three years for the gun specification.

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1 Count six, complicity to kidnapping, three
2 years, plus three years for the gun specification.

3 Count seven, kidnapping, three years, plus
4 three years for the gun specification.

5 Count eight, complicity to kidnapping, three
6 years, plus three years for the gun specification.

7 Count nine, felonious assault, two years, plus
8 three years for the gun specification.

9 Count ten, felonious assault, two years, plus
10 three years for the gun specification.

11 Excuse me.

12 Count eleven, complicity to felonious assault,
13 two years, plus three years for the gun specification.

14 Count twelve, complicity to felonious assault,
15 two years, plus three years for the gun specification.

16 Counts one, two, three, and four merge for
17 sentencing.

18 Counts five and six, counts seven and eight,
19 counts nine and eleven, counts ten and twelve merge for
20 sentencing.

21 Counts ten and twelve will be served
22 concurrent to one another but consecutive to the
23 sentences in counts one, two, three, four, five, six,
24 seven, eight, nine, and eleven.

25 Counts one, two, three, four, five, six,

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1 seven, eight, nine, eleven will be served concurrently
2 to each other.

3 All gun specifications will be -- will be
4 served concurrently to the other gun specifications.

5 Nicole Hubbard, counts one and two do not
6 apply to you.

7 Count three, you are found not guilty.

8 Count four, complicity to murder, fifteen
9 years to life.

10 Count five you were found not guilty.

11 Count six, complicity to kidnapping, three
12 years.

13 Count seven you were found not guilty.

14 Count eight, complicity to kidnapping, three
15 years.

16 Count nine, felonious assault, two years.

17 Count ten, felonious assault, two years.

18 Count eleven, complicity to felonious assault,
19 two years.

20 Count twelve, complicity to felonious assault,
21 two years.

22 Counts nine and eleven will merge for
23 sentencing.

24 Counts ten and twelve merge for sentencing.

25 The sentences in counts ten and twelve will

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1 be served concurrent to one another but consecutive to
2 the sentences in counts four, six, eight, nine, and
3 eleven.

4 Counts four, six, eight, nine, and eleven will
5 be served concurrent to each other.

6 Ms. Hubbard, you will receive 73 days credit
7 for jail.

8 Mr. Ru-el Sailor, you will receive 113 days.

9 Mr. Cordell Hubbard, you'll receive 92 days
10 credit for the time you have served thus far.

11 Now, as to my findings as to why consecutive
12 sentences are necessary. I find it is necessary to
13 protect the public from future crimes and to punish each
14 and every one of you for the horrible thing that
15 occurred on that night to both victims. There are two
16 victims in this case.

17 And I also find that consecutive sentences are
18 not disproportionate to the seriousness of the conduct
19 and are not disproportionate to the danger posed to the
20 community.

21 Obviously there can be no more serious
22 conduct than to cause the death of another and to
23 attempt to cause serious physical harm to the other
24 gentleman, Mr. Clark Williams, by means of that gun.
25 Obviously you are all three a serious danger to the

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1 community.

2 I also find that the harm was so great that
3 no single prison term adequately reflects the
4 seriousness of the offense, and the history of criminal
5 conduct of each of you makes multiple terms necessary
6 for the protection of the public from these offenders.

7 I base my above findings on the following.
8 All three defendants adamantly denied their guilt to
9 the probation department in the presentence report.
10 Obviously there is no sincere remorse.

11 Also, as I pointed out, there are two victims
12 in this case. There is the victim Omar Clark, whose
13 life is gone, forever, and lost, and also to Clark
14 Williams, who was there and a bullet grazed him. It's
15 but for the grace of God that he wasn't murdered as well
16 that evening.

17 Now, I would like to point out that Cordell
18 Hubbard has a significant juvenile record, including
19 assault, domestic violence, aggravated robbery, and
20 preparation of drugs for sale.

21 I would like to point out that Mr. Ru-el
22 Sailor has two prior adult felony convictions, one for
23 possession of drugs and one for trafficking in drugs.
24 He also has a juvenile record for aggravated riot.

25 Then Nicole Hubbard has both a significant

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1 juvenile record as well as a prior burglary conviction
2 as an adult.

3 Clearly consecutive sentences are necessary
4 and appropriate in this particular case.

5 Now, Mr. Hubbard, Mr. Sailor, and Ms. Hubbard,
6 you each have the right to appeal your case to the
7 Eighth District Court of Appeals. That appeal must be
8 perfected within -- I believe it's -- is it 30 days?

9 MR. WATSON: Yes, Judge.

10 THE COURT: 30 days from today's date.

11 If you do not have the funds to hire an
12 attorney, the Court will appoint one for you at no cost
13 to you.

14 Mr. Hubbard, Mr. Cordell Hubbard, do you wish
15 to appeal this, the conviction, as well as the sentence
16 I just imposed?

17 DEFENDANT CORDELL HUBBARD: Yes, your
18 Honor.

19 THE COURT: And do you have the funds to
20 hire an attorney?

21 MR. CORDELL HUBBARD: Yes, your Honor.

22 THE COURT: So you're going to hire an
23 attorney?

24 MR. CORDELL HUBBARD: Yes, your Honor.

25 THE COURT: All right. Next we have

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1 Mr. Ru-el Sailor. Would you like to appeal this verdict
2 and sentencing, sir?

3 DEFENDANT SAILOR: Yes, your Honor.

4 THE COURT: And it's my understanding
5 you've already hired Mr. Mancino; is that correct?

6 DEFENDANT SAILOR: Yes.

7 THE COURT: And he will be perfecting your
8 appeal for you; is that correct?

9 DEFENDANT SAILOR: Yes.

10 THE COURT: All right. Ms. Hubbard, do
11 you wish to appeal the verdict and the sentence of this
12 Court?

13 DEFENDANT NICOLE HUBBARD: Yes.

14 THE COURT: And do you have the funds to
15 hire an attorney to do that?

16 DEFENDANT NICOLE HUBBARD: Yes.

17 THE COURT: All right. All right. All of
18 you have been given your appellate rights.

19 And anything further on behalf of the State of
20 Ohio?

21 MR. THOMAS: No, your Honor. Thank you.

22 THE COURT: Anything further on behalf of
23 Cordell Hubbard?

24 MR. WATSON: Just one thing, your Honor.

25 The pending case, when does the Court like to

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1 proceed to sentencing on that case, the drug case that
2 you referenced?

3 THE COURT: Oh, I'm sorry, I neglected to
4 do that. I think as soon as we're done with this we
5 should proceed with that.

6 MR. WATSON: Okay. Thank you, your Honor.

7 THE COURT: All right. Thank you,
8 Mr. Watson.

9 Anything further, Mr. Mancino or Mr. Mack, on
10 behalf of Ru-el Sailor?

11 MR. MANCINO: Well, we still have the
12 motion for a new trial, if the Court rules --

13 THE COURT: I have not ruled on it yet.

14 MR. MANCINO: Because that will toll the
15 appellate time.

16 THE COURT: All right. No, I have not
17 ruled on that.

18 Anything further?

19 MR. MANCINO: No, nothing further.

20 THE COURT: Mr. Willis?

21 MR. WILLIS: Yes, your Honor. I certainly
22 would like the opportunity to -- to respond to the
23 State's response to a new trial that I received
24 yesterday, I feel I should respond in kind, and I'm
25 hoping the Court would set that down for a hearing.

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1 THE COURT: That will be fine. When this
2 is concluded, if all of the lawyers will meet with
3 Ms. Mahoney, and she will give you a day for the
4 hearing.

5 All right. With respect to the -- can I have
6 the other file on Mr. Cordell Hubbard?

7 Do you have the number, Mr. Watson?

8 MR. WATSON: Not with me, your Honor.

9 THE COURT: All right. Mr. Sailor and
10 Ms. Hubbard are done.

11 - - - - -

12 (Thereupon, Defendant Nicole Hubbard and
13 Defendant Ru-el Sailor exited the courtroom.)

14 - - - - -

15 THE COURT: Mr. Watson and the State, would
16 you approach the bench for one moment?

17 - - - - -

18 (Thereupon, a discussion was had at the
19 sidebar off the record.)

20 - - - - -

21 MR. MACK: Can I approach the bench with
22 Paul for a second?

23 THE COURT: Sure.

24 - - - - -

25 (Thereupon, a discussion was had at the

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1 sidebar off the record.)

2 - - - - -

3 THE COURT: All right. We're going to go
4 back into session.

5 All right. Mr. Cordell Hubbard, you're also
6 being sentenced in Case 437646, in which you pled no
7 contest to count one, carrying a concealed weapon, a
8 felony of the fourth degree; count two, drug
9 trafficking, a felony of the third degree with a firearm
10 specification; count three, possession of drugs, a
11 felony of the third degree with a one-year firearm
12 specification; count four, having a weapon while under
13 disability, a felony of the third degree, and count
14 five, possessing criminal tools, a felony of the fifth
15 degree.

16 Mr. Watson, what would you like to say?

17 MR. WATSON: Your Honor, for the record,
18 we would just incorporate the presentence investigation
19 report that was done in the other case relative to the
20 prior sentencing.

21 Judge, Mr. Hubbard has already been given a
22 lengthy prison sentence. And it is my hope -- and he's
23 still a very young man. The evidence bore out that he
24 was employed. He worked in a family business. He, too,
25 has children of his own that he does support and had

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1 supported, even during the trial in which this case was
2 pending and prior to that.

3 It's just my hope that the Court will
4 entertain the minimum sentence and have that sentence
5 run concurrently.

6 I believe that the offenses -- there's no
7 presumption either way. Certainly we are not -- our
8 comments are not to be taken that we're trying to
9 minimize his role in this particular offense, but
10 certainly we would hope that the Court will take into
11 consideration the lengthy sentence that he's already
12 been given. I think that it wouldn't really serve any
13 utility, in light of the sentence, to give him
14 consecutive time.

15 THE COURT: What would you like to say,
16 Mr. Hubbard?

17 DEFENDANT CORDELL HUBBARD: Nothing, your
18 Honor.

19 THE COURT: Mr. Thomas?

20 MR. THOMAS: Your Honor, this Court, I
21 know, is well aware, but I feel compelled to make a
22 record, that these offenses occurred while this
23 defendant was on bond to this Court for the case the
24 Court just pronounced sentence on, the aggravated murder
25 case of Omar Clark. Brazen disregard of this individual

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1 to, while on bond to this Court, conduct himself by
2 having in his possession a felony three quantity of
3 marijuana and a loaded firearm, all of which he
4 acknowledged during his testimony in the motion hearing
5 as being his property, demands not only consecutive
6 sentences, but more than minimum sentences.

7 Thank you.

8 THE COURT: All right. Count one, I
9 sentence you to a year.

10 Count two, I sentence you to a year, plus an
11 additional one year for the gun specification.

12 Count three, I sentence you to a year, plus
13 one year additional for the gun specification.

14 Count four, I sentence you to a year.

15 Count five, I sentence you to a year.

16 They will all be served concurrently to one
17 another. The gun specifications will obviously be
18 consecutive to the underlying sentence. And they will
19 also be consecutive to Case No. 435700.

20 I already stated the reasons for consecutive
21 sentences, but I think it's necessary that I make the
22 findings with respect to this case.

23 I find it is necessary to protect the public
24 from future crimes. You're out on bond for a murder,
25 and you have a gun in your possession. I think it's

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1 also necessary to punish you. It is as the prosecutor
2 said, absolutely brazen that you would be involved in
3 this kind of activity at that time, at any time,
4 frankly, but at this time in particular.

5 I also find that consecutive sentences are not
6 disproportionate to the seriousness of the conduct and
7 are not disproportionate to the danger imposed to the
8 community. You're involved in a murder with a gun, and
9 shortly thereafter you're selling drugs with a gun. The
10 public needs to be protected from you, Mr. Hubbard.

11 I also find that the harm was so great that
12 no single prison term would adequately reflect the
13 seriousness of the offense, and your history of criminal
14 conduct makes multiple terms necessary for the
15 protection of the public from these offenders.

16 You had quite a significant amount of
17 marijuana on your person. You were carrying a gun.
18 You were carrying that gun while you were under a
19 disability.

20 And I base all of my -- I base my sentence on
21 all of those factors.

22 And just for the record again, your prior
23 convictions are a significant juvenile record, including
24 assault, domestic violence, aggravated robbery,
25 preparation --

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1 DEFENDANT CORDELL HUBBARD: I --

2 THE COURT: -- preparation of drugs for
3 sale.

4 THE DEFENDANT: Your Honor --

5 THE COURT: Sir, upon your release from
6 jail you'll be subject to post-release control for five
7 years. All right.

8 MR. WATSON: Your Honor, may we approach?

9 THE COURT: Sure.

10 - - - - -

11 (Thereupon, a discussion was had at the
12 sidebar off the record.)

13 - - - - -

14 THE COURT: All right. Mr. Hubbard, one
15 last thing.

16 Mary Jean, I'm sorry.

17 Sir, as you pled no contest to these charges,
18 you have a right to appeal this matter to the Eighth
19 District Court of Appeals, just as you do your murder
20 sentence and conviction.

21 Do you wish to appeal this particular case
22 that you were just sentenced on to the Eighth District
23 Court of Appeals?

24 DEFENDANT CORDELL HUBBARD: Yes, your
25 Honor.

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1 THE COURT: You do?

2 DEFENDANT CORDELL HUBBARD: Yes.

3 THE COURT: And do you have the money to
4 hire an attorney to do that?

5 DEFENDANT CORDELL HUBBARD: Yes, your
6 Honor.

7 THE COURT: All right. Thank you.
8 Thanks, Myron.

9 - - - - -

10 (Thereupon, Defendant Cordell Hubbard
11 exited the courtroom.)

12 - - - - -

13 (Thereupon, Defendant Ru-el Sailor entered
14 the courtroom.)

15 - - - - -

16 THE COURT: All right. We're back on the
17 record on 435700 A, State of Ohio vs. Cordell Hubbard.

18 MR. MACK: No, this is B.

19 THE COURT: Oh, I'm sorry. I'm sorry.
20 I'm looking at the wrong one. 435700-B, the State of
21 Ohio vs. Ru-el Sailor.

22 Is that you, sir?

23 DEFENDANT SAILOR: Yes, sir. Yes, ma'am.
24 Sorry about that.

25 THE COURT: That's all right.

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1 Mr. MACK: He couldn't -- if he was Ray
2 Charles or Stevie Wonder, who was blind, he couldn't
3 make that mistake, your Honor.

4 THE COURT: Thank you, Mr. Mack.

5 You're here with your attorney, Mr. Mack.

6 I neglected to tell you, sir, that you'll be
7 subject to five years post-release control when you're
8 released from jail. That's it.

9 - - - - -

10 (Thereupon, Defendant Ru-el Sailor exited
11 the courtroom.)

12 - - - - -

13 (Thereupon, Defendant Nicole Hubbard entered
14 the courtroom.)

15 - - - - -

16 THE COURT: All right. We're here on
17 4357000 C, the State of Ohio vs. Nicole Hubbard.

18 Is that you, ma'am?

19 DEFENDANT NICOLE HUBBARD: Yes.

20 THE COURT: All right. You're here with
21 Mr. Watson, as Mr. Willis has gone to a trial in another
22 matter. Do you have any objection to him standing in at
23 this time?

24 DEFENDANT NICOLE HUBBARD: No.

25 THE COURT: All right. At the time of

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1 the sentencing, I neglected to tell you that upon your
2 release you'll be subject to five years post-release
3 control.

4 Anything further, Mr. Watson?

5 MR. WATSON: None, your Honor.

6 THE COURT: All right. Thank you.

7 - - - - -

8 (Proceedings adjourned.)

9 - - - - -

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C E R T I F I C A T E

We, Robert S. Kraska, Lisa Hrovat, Kathleen A. Kilbane & Mary Jean Cooley, Official Court Reporters for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporters we took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that we have transcribed our said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the trial of said cause and constitutes a true and correct Transcript of Proceedings had therein.

Robert S. Kraska
Robert S. Kraska
Official Court Reporter

Lisa Hrovat
Lisa Hrovat
Official Court Reporter

Kathleen A. Kilbane
Kathleen A. Kilbane, RMR
Official Court Reporter

Mary Jean Cooley
Mary Jean Cooley, RMR
Official Court Reporter

1 THURSDAY MORNING SESSION, SEPTEMBER 4, 2003

2 - - -

3 THE COURT: We are here on
4 Case No. 435700, the State of Ohio versus
5 Cordell Hubbard, Ru-el Sailor and Nicole
6 Hubbard. Mr. Watson is here for Cordell
7 Hubbard and Nicole Hubbard, is that correct?

8 MR. WATSON: That's correct,
9 Your Honor.

10 THE COURT: And Mr. Mancino
11 is here for Mr. Ru-el Sailor, is that correct?

12 MR. MANCINO: Yes, it is.

13 THE COURT: Miss Clancy is
14 here on behalf of the State of Ohio. I have a
15 motion for new trial on Miss Hubbard,
16 Mr. Hubbard and Mr. Sailor. The Hubbards also
17 have along with their motion for new trial a
18 judgment of acquittal.

19 Miss Clancy, it's my understanding
20 there have been appeals filed on behalf of
21 Cordell Hubbard and Nicole Hubbard, is that
22 correct?

23 MS. CLANCY: That's correct,
24 Your Honor.

25 THE COURT: Do you have the

1 date or some information from the Court of
2 Appeals?

3 MS. CLANCY: I believe I
4 provided a copy to Tom yesterday. I think I
5 left it in the back room. I believe the date
6 was August 27th of this year.

7 THE COURT: Mr. Watson, is
8 that correct?

9 MR. WATSON: That's correct,
10 Your Honor.

11 THE COURT: Would you like to
12 say anything relevant to that, Miss Clancy?

13 MS. CLANCY: Your Honor, we
14 request at this time that since the defendants
15 have filed their notice of appeals that any
16 ruling on the motion for new trial be held in
17 abeyance at that time until the Court of
18 Appeals rules on their appeal. These are two
19 inconsistent requests being made, one to the
20 trial court and one to the Court of Appeals so
21 at this time we would request any ruling on
22 these motions for new trial be held in abeyance
23 until the Court of Appeals has made their
24 determination.

25 THE COURT: And what is the

1 case law relative to whether or not -- can you
2 have a trial court rule on a motion for new
3 trial when the Court of Appeals has already
4 received the appeal of the defendants?

5 MS. CLANCY: Well, the case
6 law seems to suggest that the trial court is
7 divested of any jurisdiction regarding the
8 motion for new trial once the defendants file
9 their notice of appeal.

10 THE COURT: Mr. Watson, would
11 you agree with that?

12 MR. WATSON: Not exactly, Your
13 Honor.

14 THE COURT: Do you have any
15 case law to show the Court and Mr. Watson?

16 MS. CLANCY: Your Honor the
17 State of Ohio versus Peter A. Kenny. It was
18 decided April 24th of 2003.

19 THE COURT: Where are you
20 directing our attention?

21 MS. CLANCY: I think it's page
22 four in the first column, four and five.

23 THE COURT: All right. In
24 paragraph 58 of page 5 we note Kenny filed
25 their motion for a new trial, it's referring

1 to, after he filed a notice of appeal from his
2 conviction. When a case has been appealed, the
3 trial court retains all jurisdiction not
4 inconsistent with the reviewing court's
5 jurisdiction to reverse, modify or affirm the
6 judgment. A motion for a new trial is
7 inconsistent with a notice of appeal of the
8 judgment sought to be retried. Therefore, the
9 defendants filing a notice of appeal divests
10 the trial court of jurisdiction to consider a
11 motion for new trial. Is that what you're
12 referring to?

13 MS. CLANCY: That's what I'm
14 referring to.

15 THE COURT: Do you see that,
16 Mr. Watson?

17 MR. WATSON: What part?

18 THE COURT: On page 5 it's
19 the second column and it's paragraph 58.

20 MR. WATSON: I see that
21 paragraph, Your Honor, but in terms of, I think
22 this case is a little bit distinguishable
23 because we're dealing with issues of
24 post-conviction claims. Certainly the trial
25 court can deal with post-conviction claims.

1 There have been cases where the Court has had
2 appeals pending where motions for
3 post-convictions on newly discovered evidence,
4 for example, are certain instances where the
5 Court can make a ruling. Certainly I think the
6 Court can make a ruling on the motions here
7 because, namely, if the Court of Appeals
8 decides in favor of the State, certainly the
9 revisiting of the motion for new trial would be
10 irrelevant at that point, so I think the Court
11 could be empowered to make a decision.

12 THE COURT: Okay, I'm going
13 to deny the motion. Actually I don't know if I
14 have jurisdiction to rule on it since it says,
15 the plain language is page 5, paragraph 58.
16 Therefore, the defendant's filing of a notice
17 of appeal divests the trial court of
18 jurisdiction to consider a motion for new trial
19 so I'm going to take my lead from the 8th
20 District Court of Appeals, and I believe I am
21 divested of jurisdiction since a notice of
22 appeal has been filed. That's the plain
23 language of that case. If you have something
24 that would contradict that, I'm certainly
25 willing to listen to it.

1 MR. WATSON: Okay, Your Honor,
2 if you would hold it in abeyance and if there
3 is --

4 THE COURT: I'm not going to
5 rule because I'm divested of the ability to
6 rule from that case, and I might say it's State
7 versus Kenny, No. 81752, 81879, 8th District
8 Court of Appeals decided April 24, 2003, so
9 Mr. Hubbard and Miss Hubbard are done, and I
10 know you have a deputy shortage. If you'd like
11 to take those two defendants back, that's fine
12 or if you want to leave them in the courtroom.
13 Deputy, it's really whatever is easiest for
14 you.

15 MR. MANCINO: Your Honor, we
16 request Mr. Hubbard remain because we need him
17 as a witness to confirm his affidavit.

18 THE COURT: He did not file a
19 motion or affidavit to Mr. Ru-el Sailor, did
20 he? I thought only Mr. Ru-el Sailor filed it.

21 MR. MANCINO: No, we filed a
22 supplement here with Mr. Hubbard's affidavit on
23 August 12th. Affidavit of Cordell Hubbard.
24 Motion for new trial.

25 THE COURT: All right.

1 Mr. Hubbard can stay. Deputies, if you want to
2 take Miss Hubbard down, you may. If you want
3 to leave her here, that's fine as well. All
4 right. With respect to Mr. Ru-el Sailor, do
5 you want to say anything in way of an opening
6 statement, Mr. Mancino?

7 MR. MANCINO: Yes, just briefly
8 in connection with our motion for a new trial.
9 I would point out we have been unsuccessful in
10 securing the appearance of William Sizemore who
11 was the person now identified being with
12 Mr. Hubbard on the day of the shooting.
13 Mr. Sizemore you know was a witness. He wasn't
14 a participant in connection with the case. He
15 was there although he's on probation to Judge
16 Fuerst. I think we pointed out last time he
17 finally ran down, Mr. Watson ran down the
18 probation officer but apparently he switched
19 probation officers. He's not scheduled for
20 another meeting I think until September the
21 11th that he's on probation. We did issue a
22 subpoena to the address that the court records
23 show he's at 12625 Columbia Avenue. That's the
24 address we gave the Court the last time we were
25 here when the detectives were here, but when

1 the subpoena was issued on August the 22nd,
2 August the 23rd, Mrs. Patrick or Miss Patrick
3 apparently resides there. She called my office
4 and she says that Sizemore does not live there.
5 Apparently they were residents of that property
6 but they were evicted by the landlord.

7 As a matter of fact, she even informed
8 me that the detectives after our last hearing
9 went to that address trying to locate
10 Mr. Sizemore. He wasn't there. He's no longer
11 living there. I don't have the current
12 address. The records still have that 12625
13 Columbia Avenue. We even issued a subpoena
14 where I understood he worked here I think it
15 was Bottoms Up. Bottom Line Club. The Bottom
16 Line Bar on, I mean 1087 Old River Road. He
17 never responded to our subpoenas in connection
18 with the case.

19 We would ask that in connection with
20 the case that he's not available, I believe
21 Mr. Hubbard can confirm the fact that it was
22 Mr. Sizemore. We do have an exhibit we'd like
23 to offer when Mr. Hubbard testifies to identify
24 a photograph of Mr. Sizemore who from the trial
25 testimony as I understand it fits exactly the

1 description given of the person who was with
2 the shooter. I understand even Omar Clark's
3 brother, Umar Clark, when he heard the
4 description given by one of the witnesses,
5 Mr. Braxton, as the description of the shooter,
6 he says he's the one who shot the weapon that
7 evening, the description given was that of
8 Cordell Hubbard, and we would request to call
9 Cordell Hubbard to the stand, Your Honor.

10 THE COURT: All right. Did
11 you want to say anything by way of opening?

12 MS. CLANCY: No, Your Honor.
13 Just I mean briefly I would just incorporate
14 all the argument that I previously made in my
15 brief. I didn't add or provide an amendment
16 once I received a copy of the affidavit of
17 Cordell Hubbard, but still there are a
18 considerable number of factors that must be
19 considered in granting the motion for new
20 trial, and I believe even through the evidence
21 and testimony of Cordell Hubbard and his
22 affidavit, I still don't believe the defendant
23 can prevail in satisfying all six of those
24 factors in order to get a new trial.

25 Again it is within the sound

1 discretion of this Honorable Court to decide
2 whether or not to grant that motion, and I
3 think the case law is clear that the
4 discretionary decision to grant a new trial is
5 an extraordinary measure which should be used
6 only when the evidence presented weighs heavily
7 in favor of the moving party. I believe any of
8 the evidence that you will hear through the
9 witness or through any of the affidavits that
10 have been provided are going to be cumulative
11 and aren't going to be providing any additional
12 facts then what we have already heard.

13 THE COURT: All right. Do
14 you want to call a witness, Mr. Mancino?

15 MR. MANCINO: Yes. We'll call
16 Cordell Hubbard, Your Honor.

17 THE COURT: Sir, would you
18 approach the bench please? Would you raise
19 your right hand?

20 - - -

21

22

23

24

25

1 THE DEFENDANT, to maintain the issues on his
2 part to be maintained, called as a witness,
3 CORDELL HUBBARD, who, being first duly sworn,
4 was examined and testified as follows:

5 THE COURT: Be careful.
6 There are two steps there.

7 - - -

8 DIRECT EXAMINATION OF CORDELL HUBBARD

9 BY MR. MANCINO:

10 Q. State your name.

11 A. Cordell J. Hubbard, sir.

12 Q. Okay, Mr. Hubbard, you were the defendant in
13 the case, the aggravated murder trial involving Omar
14 Clark; is that correct?

15 A. Yes, sir.

16 Q. At the trial you did not testify, is that
17 correct?

18 A. Correct.

19 Q. And when the verdict, when the jury returned
20 verdicts, did you inform Mr. Sailor about the
21 information you put in your affidavit?

22 A. When I went back to the holding cell, sir.

23 Q. That was after the trial in the case?

24 A. Correct.

25 Q. That was after the jury had returned its

1 verdict in open court?

2 A. Yes, sir.

3 Q. And prior to that time you never had told --
4 had you ever told Mr. Sailor that information?

5 A. No, sir, I kept it to myself.

6 Q. Now you signed an affidavit here on August the
7 9, 2003; is that correct?

8 A. Yes, sir.

9 Q. Do you remember where you were when you signed
10 it?

11 A. In Lorain Correctional facility.

12 Q. And the notary public you signed it before was
13 whom?

14 A. Mr. Watson.

15 Q. Are all of these statements in this affidavit
16 that you signed, the ten paragraphs, are they true?

17 A. Yes, sir.

18 (Thereupon, Defendant's Exhibit A was marked
19 for the purpose of identification.)

20 Q. Mr. Hubbard, showing you Defendant's Exhibit A,
21 and first tell us what it is.

22 A. It's a picture.

23 Q. And in that picture can you, do you recognize
24 who is shown in that picture?

25 A. Yes, sir.

1 Q. Looking at Defendant's Exhibit A there is a
2 person who has, looks like a football jersey or a
3 jersey, it looks like a 92 on it; is that correct?

4 A. Yes, sir.

5 Q. Who is that person?

6 A. That's Will.

7 Q. Will. Did you know his last name at that time?

8 A. No, sir, just Will.

9 Q. And do you know Will's last name now?

10 A. I believe it's William Sizemore.

11 Q. And on the evening of the shooting of Omar
12 Clark, was Mr. Sizemore with you?

13 A. Yes, sir.

14 Q. Was Ru-el Sailor anywhere present at the time
15 of the shooting?

16 A. No, sir.

17 Q. Previously that evening had you been with
18 Mr. Sailor?

19 A. We was at the bar.

20 Q. And do you remember what bar that was?

21 A. The Benjamin.

22 Q. What's the name of it again?

23 A. The Benjamin. Now it's the 4U2B Lounge.

24 Q. Where is that located?

25 A. Benjamin's Lounge is located on 152nd off St.

1 Clair and 4U2B bar is out at 260 and Euclid.

2 Q. And at these two bars, were you always side by
3 side with Mr. Sailor?

4 A. No. No, sir.

5 Q. Were you doing whatever you wanted to do on
6 your own there?

7 A. Yes, sir, it was a bar.

8 Q. When you went to the scene of the shooting, was
9 Mr. Sailor with you?

10 A. No, sir.

11 Q. Did you tell him you were leaving or anything?

12 A. No, sir, I just left.

13 Q. And how was it that Mr. Sizemore, Will Sizemore
14 or William Sizemore, was with you?

15 A. Because we rode.

16 Q. Pardon?

17 A. We rode together.

18 Q. From the bar?

19 A. From the 4U2B Lounge. We rode from the 4U2B
20 Lounge and went down on 105 and Englewood.

21 Q. Did you tell Mr. Sailor that you were going to
22 leave or where you were going?

23 A. No, sir.

24 Q. After the shooting did you return to either of
25 these bars?

1 A. No, sir. I went to St. Aloysius.

2 Q. Where is St. Aloysius located?

3 A. On I believe it's 109 and St. Clair.

4 Q. Did you meet up with Ru-el Sailor there at
5 St. Aloysius?

6 A. Yes.

7 Q. I mean did you come there together or was he
8 there when you arrived or what was the situation?

9 A. We didn't go together, me and Will. I dropped
10 Will off and I went and told him I was going. My
11 cousin called and told me to come up there so it was
12 like we met there.

13 Q. Do you know if you were there first or Ru-el
14 was there first?

15 A. I was there first.

16 Q. Then Ru-el arrived?

17 A. Yes, sir.

18 Q. Did Ru-el Sailor have anything to do with the
19 shooting of Omar Clark?

20 A. No, sir.

21 Q. Did he ever ask you to do anything to Omar
22 Clark?

23 A. No, sir.

24 Q. Did he ever encourage you to do anything to
25 Omar Clark?

1 A. No, sir.

2 Q. As far as the shooting of Omar Clark, you were
3 the one who shot him according to your affidavit, is
4 that right?

5 A. Yes, sir, in self-defense.

6 Q. Just coming back to Defendant's Exhibit A, you
7 are shown in this picture also; is that correct?

8 A. Yes, sir.

9 Q. Where are you in that picture?

10 A. Second person from the left. The third from
11 the right in the tan.

12 Q. And is Ru-el Sailor shown in this picture also?

13 A. Yes, sir. He's in the back.

14 Q. How would you describe your coloring?

15 A. Light skinned.

16 Q. How would you describe Will Sizemore's
17 coloring?

18 A. Light skinned.

19 Q. How would you describe Ru-el Sailor's coloring?

20 A. Dark skin.

21 Q. You know who this fourth person is here?

22 A. My cousin Sherome.

23 MR. MANCINO: We would offer
24 Defendant's Exhibit A, Your Honor.

25 THE COURT: All right. You

1 can leave that with the court reporter. That's
2 the picture from the trial, right?

3 MR. MANCINO: I don't believe
4 so. It's a different picture.

5 THE COURT: I thought it was
6 from the trial. Oh, but the same -- okay.

7 Q. Is there any doubt in your mind that Ru-el
8 Sailor was not with you?

9 A. No, sir.

10 MR. MANCINO: I have no further
11 questions.

12 THE COURT: Miss Clancy.

13 MS. CLANCY: Thank you, Your
14 Honor.

15 - - -

16 **CROSS-EXAMINATION OF CORDELL HUBBARD**

17 **BY MS. CLANCY:**

18 Q. So what you're telling us today is on November
19 16th of 2002 you were with Ru-el Sailor for the
20 evening. However, when you went to Englewood he
21 wasn't with you?

22 A. Repeat that question, ma'am.

23 Q. On November 16th of 2002 when you killed Omar
24 Clark the defendant, Ru-el Sailor, was with you
25 throughout the evening except for when you went over

1 to Englewood?

2 A. Me and Ru-el was the guy at the Benjamin's
3 Lounge Bar. We was together and at the 4U2B Lounge
4 Bar and he was not with me at 105. We was together
5 afterwards at St. Aloysius. Me and William was there.

6 Q. When did you meet up with Ru-el Sailor that
7 night?

8 A. Early, like about around ten o'clock.

9 Q. Ten o'clock in the evening?

10 A. Yes.

11 Q. Once you met him, what did you do?

12 A. I had a few drinks at the Benjamin's Lounge
13 Bar. I was rapping.

14 Q. Where did you meet him?

15 A. At the bar, Benjamin's Lounge Bar. Benjamin's.

16 Q. What color car were you driving that night?

17 A. It was a gray car.

18 Q. What kind of car was he driving that night?

19 A. I think it was a white car.

20 Q. Once you got to the Benjamin's Bar, what did
21 you do?

22 A. Nothing. We all sat, drank. I rapped so we
23 was rapping. We had a rap contest then we all decided
24 to go to the 4U2B Lounge. We left all in different
25 cars and went for the 4U2B Lounge and had more drinks.

1 That's it.

2 Q. Well how long did you stay at Benjamin's?

3 A. For about an hour, yeah, about an hour or two
4 probably. We was there for a minute. About an hour
5 or two.

6 Q. What time did you leave Benjamin's?

7 A. I can't really give you an exact time but I
8 know it was before one o'clock.

9 Q. One o'clock in the morning?

10 A. Yes.

11 Q. When you left to go, who was driving with you?

12 A. Me and William.

13 Q. Will Sizemore?

14 A. William, yes. William Sizemore.

15 Q. So when you sat here and you listened to the
16 testimony of Ru-el Sailor then everything that he
17 testified to was wrong, is that what you're telling us
18 today?

19 A. No, ma'am.

20 Q. It's not wrong?

21 A. No, ma'am.

22 Q. Well, didn't Ru-el Sailor testify that he was
23 in the car with you the entire evening?

24 A. Ru-el had to get his hat. I didn't tell him --
25 he didn't even have knowledge of what happened so

1 myself trying to cover myself up, I was, you know,
2 trying to tell him I don't remember. I was with you.
3 We was at the bar, you know, so it happened last year.
4 It's about to be a whole year so I was trying to make
5 him remember like I was with you, remember we was
6 doing all this, you know so --

7 Q. So when he said he was with you that whole
8 night, that's not true then?

9 A. Not the whole night, no, ma'am.

10 Q. All right. So you left Benjamin's Bar then you
11 went to the 4U2B Bar?

12 A. Yes.

13 Q. All right. Do you remember what time you got
14 there?

15 A. It had to be about like I said I know it was
16 before one o'clock. It was about, as a matter of
17 fact, it had to be about 11:00 something.

18 Q. Once you got to the 4U2B Bar, what did you do?

19 A. Drank.

20 Q. Okay, Ru-el Sailor was there with you?

21 A. Yeah, he was in there too.

22 Q. How did it come about that you left that bar?

23 A. I got a phone call.

24 Q. And once you got the phone call, what did you
25 do?

1 A. I left. I just upped and left. Will was
2 riding with me. I told him I was leaving. He said he
3 was riding with me.

4 Q. All right. He rode with you and where did you
5 go?

6 A. Englewood. 105 and Englewood.

7 Q. And before you left did you see Ru-el Sailor?

8 A. I mean I seen him not right before I left. I
9 just, the 4U2B is real big. I got the phone call,
10 went into the bathroom. I just hung up and walked
11 right out. Will was like, "What's up?" I said, "I'm
12 about to leave." He said, "I'm leaving with you", and
13 we left.

14 Q. What was Will wearing that night?

15 A. Excuse me?

16 Q. What was Will wearing that night?

17 A. Will?

18 Q. What was Will wearing?

19 A. He had a white T-shirt on and like white cream
20 shorts.

21 Q. He had shorts on?

22 A. Yeah. Yes. Some white cream shorts like.

23 Q. What was Ru-el Sailor wearing that night?

24 A. That jersey. The New Jersey jersey. It was
25 gray. New Jersey jersey.

1 Q. Ru-el had a red jersey on that night?

2 A. No, gray.

3 Q. Gray jersey on that night?

4 A. Yeah.

5 Q. What did you have on that night?

6 A. I had on red, gray-like suede material sweater.

7 Q. And who was wearing red headbands that night?

8 A. I had a red headband on.

9 Q. Who else did?

10 A. Ru-el probably had one on. I know he had one
11 on in the picture but we take them on and off.

12 Certain spots don't let you wear headbands in the bar
13 like for the 4U2B Bar, you can't wear them in the bar.

14 Q. All right. You were here during the trial when
15 other photographs were introduced as exhibits, right?

16 A. Correct.

17 Q. Okay, no one other than you and Ru-el Sailor
18 were in those photographs, right?

19 A. Me, Ru-el and my cousin Sherome, some other
20 females.

21 Q. Was anyone else in any of those photos?

22 A. Yes, my cousin, a female. I don't even know.
23 People would be hopping in the pictures.

24 Q. Was William Sizemore in any of those photos?

25 A. We only went one place and took photos. That

1 was at St. Aloysius. I dropped him off before I went
2 there.

3 Q. So during the entire trial this photo,
4 Defendant's Exhibit A, wasn't available?

5 A. That wasn't the night we took it. That was
6 this year.

7 Q. This Defendant's Exhibit A, when was this
8 taken?

9 A. This year.

10 Q. This wasn't taken on the night of November
11 16th?

12 A. No. The one that was produced in trial --

13 Q. The one that was produced in trial was taken on
14 November 16th of 2002?

15 A. Yes.

16 Q. Okay, so this photo, Defendant's Exhibit A,
17 wasn't taken on November 16th of 2002?

18 A. No.

19 Q. When was this photo taken?

20 A. This year, ma'am.

21 Q. When this year?

22 A. As a matter of fact, that's when I got out.
23 That's the day I got out of jail.

24 Q. Okay, so none of the photos that were produced
25 at trial had William Sizemore in those photos, right?

1 A. We only took one photo, well, that one place we
2 took photos that was at St. Aloysius. I told you I
3 dropped him off before I went to St. Aloysius.

4 Q. There were two photos taken that were
5 introduced at trial, is that correct?

6 A. Correct.

7 Q. Okay, so there was more than one photo taken at
8 St. Aloysius?

9 A. Yes, but at the same spot, St. Aloysius.

10 Q. In none of those photos was William Sizemore
11 present?

12 A. No, he wasn't there.

13 Q. He never made it to St. Aloysius that night?

14 A. I dropped him off before I went to
15 St. Aloysius, ma'am.

16 Q. Where did you drop him off?

17 A. I can't really tell you where. It was like in
18 the heat of the moment. Just told me to drop him. I
19 dropped him off.

20 Q. I thought he had a car with you? Didn't you
21 testify he had his own car with him?

22 A. I was driving, ma'am.

23 Q. Okay, I thought you testified that at the
24 beginning of this evening Ru-el Sailor was driving a
25 white car.

1 A. He was.

2 Q. Okay, so what happened to the white car?

3 A. Who we talking about? Will or Ru-el?

4 Q. Ru-el Sailor.

5 A. You just asked me was William Sizemore present

6 when the picture, photo was taken. Now you jumped to

7 Ru-el. You confuse me.

8 Q. Sorry about that. Was Ru-el Sailor present at

9 St. Aloysius?

10 A. Yes, he was.

11 Q. Was William Sizemore present at St. Aloysius?

12 A. No, he wasn't.

13 Q. So after you killed Omar Clark, then you took

14 William Sizemore home, is that correct? That's what

15 you're telling us today?

16 A. After I left the scene of 150 and Englewood, I

17 dropped William Sizemore off.

18 Q. Then where did you go?

19 A. I went to St. Aloysius.

20 Q. And that's when you took the photos with Ru-el

21 Sailor?

22 A. Yes, and my cousin, some females, yes.

23 Q. All right. Now you testified that you shot

24 Omar Clark. It was in self-defense, right?

25 A. Yes.

1 Q. That's what you're testifying to?

2 A. Yes, self-defense. Yes.

3 Q. That's what's included in your affidavit?

4 A. Yes.

5 Q. And how was this self-defense?

6 A. Because Omar Clark had a weapon. He drew a
7 weapon on me, not once but twice.

8 Q. Well, when did he draw the weapon up the first
9 time?

10 A. When he walked up to the scene.

11 Q. And then what did you do?

12 A. Nothing. Will knew him. I don't know him. I
13 didn't know none of the guys out there. He put a gun
14 up and walked to the car. There was another parked
15 car on the right-hand side. He walked up, asked who
16 that was. He pulled his gun out on him. Dude got out
17 of the car, told him nigger, get away from my car.
18 Said get the fuck away from my car, then he walked
19 back, pointed the gun at me.

20 Q. All right. So once he pointed the gun at you,
21 what did you do?

22 A. I drew my gun when he turned around.

23 Q. And then you shot him?

24 A. No.

25 Q. Once you drew your gun, what did you do?

1 A. Told Will to tell him. Will said, man, he seen
2 me pull out the gun. He said don't shoot. I was like
3 man, don't shoot. He is woo'd. He said, man he isn't
4 going to shoot. I don't know.

5 THE COURT: You don't know if
6 he was what?

7 THE WITNESS: I'm sorry, Your
8 Honor, under the influence of PCP but he was.

9 THE COURT: Who was under the
10 influence?

11 THE WITNESS: Omar Clark
12 because he was dangling the gun just, you know,
13 I'm like Will told him to put the gun up. He's
14 like, man he's going -- he put it up the first
15 time and then he walked to the car, pulled it
16 back out on the dude. I guess it was the
17 peoples who came to testify, uncle or
18 something. They were saying he was sitting in
19 the car. That's when he pulled it out on me.
20 He walked up on Will. That's when Will smacked
21 his hand like man, get the fuck off me and he
22 turned around and that's what happened.

23 Q. And he turned around?

24 A. Put the gun away. Turned around like this.
25 (Indicating).

1 Q. The gun pointed at you?

2 A. Yeah.

3 Q. Turned around with the gun pointed at you?

4 A. As he was turning, that's when I shot.

5 Q. How many times did you shoot him?

6 A. I couldn't tell you, ma'am.

7 Q. More than once?

8 A. I don't know. I just know I shot him. I
9 couldn't tell you. I couldn't be exact. I just know
10 I shot him.

11 Q. Was it more than once?

12 A. Yeah.

13 Q. Yes?

14 A. Yes, I was just shooting. I don't know. I
15 couldn't tell you exactly how many times I shot him,
16 ma'am.

17 Q. Was anyone else shooting on that night?

18 A. Yeah, some guy. The way it happened, the way
19 it happened, I couldn't -- it happened. It was so
20 messed up. I had a firearm on me. Omar Clark had a
21 firearm. There was another guy on the cut and a
22 cousin had a firearm on him also.

23 Q. Who is this other guy?

24 A. I don't know.

25 THE COURT: What did you say

1 his name was?

2 THE WITNESS: I don't know.

3 THE COURT: Did you say cut?

4 THE WITNESS: He was off on a
5 cut.

6 THE COURT: I thought you
7 said his name was Cut. He was off on a cut?

8 THE WITNESS: When we pulled up
9 to the scene, the guys, you know, we were out
10 here. The dude was right here. Dude, you know
11 what I'm saying. "What's up?", so I called my
12 sister. "What do you have on him?" My sister
13 is like, "Man, forget it. I'm cool. It's
14 cool. I'm all right", so I'm on the phone with
15 my sister and Will is having words. William
16 Sizemore was like -- Will was having words.
17 "It's cool fucker. I'm cool. Hang up." I'm
18 like, "Come on. I don't even know this guy",
19 so I'm like it's just him by himself at this
20 time, and then when we were walking off Omar
21 Clark walks up with the firearm.

22 I'm like, "What's up, nigger? What's
23 up?" Then that's when I'm like, you know, Will
24 is like, "Nigger, you know me", and that's when
25 they were talking like, "Yeah, what's up? This

1 is my dude." He didn't even get involved in
2 the first place.

3 Q. Let me stop you there. You're telling us today
4 that Omar Clark walked up to you and pointed the gun
5 at you?

6 A. No, he walked up on the scene. He had the gun
7 out.

8 Q. He walked up on the scene and just had the gun
9 out?

10 A. Yeah.

11 Q. You just pulled up and all of a sudden you see
12 Omar Clark there standing with the gun?

13 A. No man, I told you. We pulled up. I pulled up
14 on the dude. Asked him, "Is your name Dude?" I
15 called my sister. She said, "Fuck it" like forget it
16 like I'm cool, I'm all right. She was like, "I'm
17 cool." I hang up.

18 At the time Dude and Will was having words. I
19 get off the phone. I'm like -- she said it's cool.
20 As we get in the car, while I was getting in the car,
21 Will was still standing there. Omar Clark walked up
22 with the gun out to his side like, "What's up, nigger?
23 What's up?"

24 I don't know, you know, around the neighborhood
25 guys I don't know, but he walked up with the gun.

1 "What's up?" Will is like, "You know me", and he's
2 like, I'm like, "Will, what's up? Tell him to put the
3 gun up." I don't know him. I don't know Dude so I'm
4 not comfortable with him with the gun out.

5 Q. Then you pulled your gun out?

6 A. No. He put his gun up and he had like a
7 little, I don't know, he put it up like this and
8 then --

9 THE COURT: Put it up like
10 this. I can't see you, sir.

11 THE WITNESS: He had a jacket
12 on. He had a jacket on, a coat. I guess the
13 pockets went like this. (Indicating).

14 THE COURT: Like in the
15 front?

16 THE WITNESS: Yeah. He put it
17 up like this.

18 THE COURT: So he put his gun
19 in his jacket?

20 THE WITNESS: Yeah, somewhere
21 like around his waistband. It was right there
22 and he walked up to the car, parked car. Like
23 who the fuck is this. Pulled the gun out. It
24 was a big dude. Big, dark-skinned dude. He
25 had on glasses. He said, "Man, get the fuck

1 away from my car." That's when he turned

2 around. He said blase, blase.

3 Q. When you say blase, blase, what do you mean?

4 A. I can't remember what he was saying after he
5 said you better get the fuck away from my car with
6 that shit. I can't say what he was telling Omar Clark
7 so Omar Clark turned around. He still had the gun
8 out. I pulled out my gun. I had a gun on me. I
9 pulled it out, put it behind my back like this. He
10 pointed to my stomach like. Then I'm like, he turned
11 around I mean to William. Will was like, you know, he
12 tried -- I don't know. He tried to touch him or
13 something. Will smacked his hand down. I was like,
14 "Will, tell him to put his gun up."

15 He turned around like this, and that's when I
16 shot him.

17 Q. He turned around. He wasn't really pointing a
18 gun at you when you shot him?

19 A. After he pointed the gun at my stomach and said
20 you ain't the only one with the stomach, he turned to
21 Will. Will smacked his hand off him. "Man, get the
22 fuck off." I'm like, "Will, tell him to put his gun
23 up." When the gun was like this, he turned around
24 like this. Say I'm the sheriff. He's like this. He
25 turned around like this. That's when I shot him.

1 Q. And you shot him a number of times?

2 A. Ma'am, I just told you I don't know how many
3 times I shot him.

4 Q. Was anyone else shooting besides you?

5 A. No.

6 Q. Just you?

7 A. A guy. The guy that had the gun in the cut.
8 He was shooting. I don't believe he was shooting at
9 us. He shot. We are on the left-hand side of the
10 street. The gunshots came from the right-hand side of
11 the street.

12 Q. Okay, so are you saying now those gunshots
13 could have hit Omar Clark also?

14 A. No.

15 Q. Okay, so after you killed him then what did you
16 do?

17 A. After I left the scene on Englewood, we got in
18 the car. We pulled off and Will was like, you know,
19 he was like dang. I was still in shock. Will was
20 like "Man, drop me off." I dropped him off to my
21 cousin. He said, "I'm at St. Aloysius." I said,
22 "Come up here." I was like, "Man, come up here.

23 "What's up?" I said, "I'm on my way up there."

24 Q. You went to St. Aloysius?

25 A. Yes.

1 Q. That's when you saw Ru-el Sailor?

2 A. That's when we met back up.

3 Q. That is when you took those photos that were
4 introduced during trial?

5 A. Yes.

6 Q. Okay, and how long did you stay at
7 St. Aloysius?

8 A. Until it was over.

9 Q. And then what did you do?

10 A. I went home with a female.

11 Q. And you weren't driving at all with Ru-el
12 Sailor?

13 A. No.

14 Q. And you didn't take him home that night?

15 A. No.

16 Q. And you never drove with him in the car?

17 A. Yes.

18 Q. When was it that you drove with him in the car?

19 A. After St. Aloysius.

20 Q. After St. Aloysius you and Ru-el Sailor were in
21 the car together?

22 A. Yes.

23 Q. Who else was in the car?

24 A. Just me and him. I parked the car because I
25 was scared.

1 Q. Where was Ru-el Sailor's car?

2 A. At St. Aloysius.

3 Q. Okay, where did you go with Ru-el Sailor?

4 A. We met up at St. Aloysius. I left my car over
5 there and got in the car with him and we was just
6 riding around.

7 Q. What were you doing riding around?

8 A. Just riding around. Still had a bottle of
9 champagne. We were sipping champagne.

10 Q. You said what?

11 A. I had a bottle of champagne. We were sipping
12 champagne. He smoked some weed.

13 Q. And did you tell him what you did?

14 A. No.

15 Q. And how long were you driving around with him?

16 A. Not that long. About a half an hour or 40
17 minutes. My phone kept ringing.

18 Q. So when Ru-el Sailor came in and testified that
19 he was with you for the entire evening, then that's a
20 lie; right?

21 A. We was together the whole time except when I
22 went on 105 and Englewood. He didn't know I left. I
23 didn't tell nobody. I didn't have plans on going, and
24 after I did it and the situation happened, I
25 definitely wasn't telling nobody that I did it.

1 Q. So then you weren't together all night?

2 A. Not on 105 and Englewood, no, ma'am.

3 MS. CLANCY: I have nothing
4 further, Your Honor.

5 THE COURT: Anything further,
6 Mr. Mancino?

7 MR. MANCINO: Yes.

8 - - -

9 **REDIRECT EXAMINATION OF CORDELL HUBBARD**

10 **BY MR. MANCINO:**

11 Q. When you go in these bars, how big of a bar is
12 Benjamin's?

13 A. Benjamin's is like half of this room.

14 Q. Are there a lot of people in there?

15 A. Sometimes, but not really, not this night
16 because not when we first got there because we was
17 rapping. You know we would be cussing. I would be
18 cussing and stuff on the mike so as people started
19 coming I stopped so it started getting like a little
20 crowded but we left.

21 Q. But you wouldn't be right next to Ru-el the
22 entire evening, would you?

23 A. No.

24 Q. He would be doing what he wanted to do and you
25 would be doing what you wanted to do, right?

1 A. Yes, we were at a bar.

2 Q. That's when you went to the other bar?

3 A. The 4U2B.

4 Q. The what?

5 A. The 4U2B.

6 Q. The 4U2B?

7 A. Yes.

8 Q. You went there for the same thing?

9 A. Yes, but it's much bigger. They have a dance
10 floor. They have two sides of it. There is a side
11 over there where you can shoot pool. A bar in the
12 middle. You can eat and there is a dance floor over
13 here.

14 Q. Were you able to actually see Ru-el when you
15 were in that bar?

16 A. We were -- I called him. I was like where are
17 you? Man, I'm over here by the pooltable or something
18 like that.

19 Q. When you say you called him, how did you call
20 him?

21 A. Went in the bathroom.

22 Q. But you never told him you were leaving out to
23 go somewhere, is that right?

24 A. No, sir. My sister called. I heard her crying
25 and I just left. Will bumped into me. I said, "I'm

1 leaving man." He said, "I'll ride with you" and we
2 left. I didn't tell nobody. I was there with my
3 friend Sammy Brown. I didn't tell him either. I just
4 left.

5 Q. Ru-el Sailor had nothing to do with causing the
6 death of Omar Clark, is that correct?

7 A. No, sir.

8 MR. MANCINO: All right.
9 Nothing further.

10 THE COURT: Miss Clancy.

11 MS. CLANCY: Nothing further,
12 Your Honor.

13 THE COURT: You may step
14 down. Anything further, Mr. Mancino?

15 MR. MANCINO: No, we don't,
16 Your Honor.

17 THE COURT: Miss Clancy.

18 MS. CLANCY: No, Your Honor.

19 THE COURT: All right. Would
20 you like to be heard in argument?

21 MR. MANCINO: Just briefly,
22 Your Honor. I think in my opinion and my
23 experience this is a pretty compelling case
24 that the Court should exercise its discretion
25 in granting a new trial on this case. I mean

1 here you have someone who was a co-defendant
2 obviously at the trial. Mr. Sailor did not
3 know the information that Mr. Hubbard had. He
4 only told him after the verdict in the case,
5 and even if Mr. Sailor did know it, he could
6 not call Cordell Hubbard.

7 There was a joint Hubbard. He could
8 not call him as a witness in the case because
9 Mr. Hubbard would obviously have the right to
10 exercise his Fifth Amendment Right and not
11 testify. He could not be compelled to testify
12 in this particular case. You know I mean this
13 to me puts a whole different slant on the
14 testimony. There is no real physical evidence
15 connecting Ru-el Sailor to this. You have some
16 eyewitness identification. Eyewitness
17 identification really doesn't describe Ru-el
18 Sailor as being there. Light-skinned
19 individual.

20 When you look at the picture there and
21 you see Will Sizemore, he is light skinned.
22 Mr. Sailor says I'm the one who did the
23 shooting. I don't know how much more
24 compelling it can be, and it seems in these
25 circumstances that this, certainly it is

1 material. It's not cumulative to anything in
2 this case. Had Mr. Hubbard obviously testified
3 at the first trial and then we were bringing
4 him in, then you could say well, this is
5 cumulative but it's not cumulative. It is new.
6 It's compelling and you have somebody that
7 states I am the one who did the shooting.

8 Mr. Sailor was convicted of the
9 offense, was nowhere there, had nothing to do
10 with it, didn't encourage me, didn't tell me to
11 do anything. I never told him anything
12 concerning the matter where I was on that
13 particular night, and you know obviously they
14 were together, but you know young males when
15 they go to a bar, they aren't hand in hand with
16 one another. They go in there. They talk to
17 whoever they want to talk to whether it's a
18 female, with their friends or whoever. They
19 aren't watching everybody every particular
20 minute.

21 You could say yes, I was in a bar with
22 him. Now whether he left or not, he wouldn't
23 have any way of knowing whether he left because
24 he's doing his own thing. You just assume you
25 see somebody and you see him later, you assume

1 that person was there the entire time, and I
2 think you know in this evidence I think in the
3 interest of justice I think we have a situation
4 where one who is actually innocent of the
5 offense has been convicted and the Court should
6 exercise its discretion and grant him a new
7 trial.

8 THE COURT: Miss Clancy, on
9 behalf of the State of Ohio.

10 MS. CLANCY: Thank you, Your
11 Honor. I want to put on the record in the
12 State of Ohio versus Petro, the six factors
13 that must be satisfied before the Court can
14 grant a motion for new trial. One being that
15 the newly discovered evidence discloses a
16 strong probability that it will change the
17 result if the new trial is granted. Two, that
18 it has been discovered since the trial, is such
19 that it could not in the exercise of due
20 diligence have been discovered before the
21 trial, is material to the issues, is not merely
22 cumulative to former evidence and does not
23 merely impeach or contradict the former
24 evidence.

25 As you are aware, Ru-el Sailor

1 testified during the trial and testified that
2 he was with Cordell Hubbard the entire evening
3 of the trial. I do believe that he even stated
4 under oath that to be honest my whole day
5 consisted of 150 and Benjamin's and Euclid and
6 then later that night went to a little party at
7 St. Aloysius all with Cordell Hubbard.

8 After the sworn testimony the
9 defendant now comes in and wants you to believe
10 everything that Cordell Hubbard has presented
11 to you today. I believe that it is cumulative,
12 and that we heard all of the evidence during
13 trial that Omar Clark was shot, that he was
14 killed and this defendant, Cordell Hubbard, was
15 identified as being there and the defendant
16 Ru-el Sailor was identified as being there so
17 what he has to present today is just in
18 addition to. He came in today and confessed
19 that he was the shooter, but we already heard
20 all this testimony during that trial of who was
21 shooting and who was there and who was present
22 and what happened through other witnesses.

23 In addition to that, you haven't heard
24 an affidavit or you haven't heard from William
25 Sizemore to say he was present, and the

1 witnesses, Tenitta Johnson and Larry Braxton,
2 testified there were more than just a few
3 people in that area, that there were people in
4 addition to Cordell Hubbard and Ru-el Sailor
5 talking to Omar Clark and Dude at the time of
6 the shooting that occurred and not one time was
7 anyone identified during that trial wearing a
8 white T-shirt and white shorts. There was no
9 identification of that. The identification was
10 red sweatpants and red T-shirts, red jerseys,
11 and the defense admitted into evidence photos
12 of both Ru-el Sailor and Cordell Hubbard.
13 Nowhere in that photo was William Sizemore or
14 anyone else other than those two and they were
15 both wearing the red sweatpants and the
16 jerseys, the red jerseys and jeans. There was
17 no identification of anyone wearing any white
18 shorts at the time.

19 Your Honor, in addition in looking at
20 the fact that this testimony completely
21 contradicts the testimony of Ru-el Sailor
22 during the trial and under oath, Cordell
23 Hubbard doesn't even come clean and testify as
24 to what happened and that now he's stating it's
25 self-defense. Again we never heard anything

1 about self-defense and there was never any
2 testimony through any of the witnesses who came
3 in here and said that Omar Clark had a weapon,
4 that there was anything that looked like
5 self-defense. There was never any testimony
6 about this other guy who is shooting somewhere
7 in the air. This is all brand new information,
8 and none of the witnesses who came in and
9 testified during trial testified to any of this
10 so you have to question the credibility of
11 Cordell Hubbard, and that now in this motion
12 for a new trial he's telling you he was the
13 shooter but he still qualifies it by saying it
14 was self-defense.

15 Omar Clark was going to shoot him. We
16 never heard about that. There was never a gun
17 recovered close to Omar Clark. There was never
18 a gun recovered in that vicinity, so again in
19 order to prevail on their motion they must have
20 satisfied all six of these elements as required
21 by the State of Ohio versus Petro and it's
22 clear that they have not satisfied this.
23 William Sizemore could have been there but the
24 witnesses who came in and testified identified
25 Ru-el Sailor as being there and Cordell Hubbard

1 and they also through the testimony of Larry
2 Braxton, he picked Ru-el Sailor out of a photo
3 array, and then when he was in court was able
4 to identify him as being there as well as Dude
5 came into court and was able to identify him
6 being there, so again, Your Honor, the granting
7 of this motion is within the sound discretion
8 of the Court, and I don't believe that the
9 defense has been able to come in here and
10 satisfy all of those elements that are required
11 by the State of Ohio versus Petro.

12 You have to look at the testimony and
13 the affidavit of this, of Cordell Hubbard, with
14 questions in that he still can't come clean as
15 to what really happened. In addition to that,
16 the testimony of Ru-el Sailor throughout trial
17 completely contradicts the testimony today so
18 for all of those reasons, Your Honor, we would
19 request that you deny this motion for a new
20 trial.

21 THE COURT: Mr. Watson, did
22 your client, Mr. Hubbard, file a notice of
23 alibi?

24 MR. WATSON: Notice of alibi
25 was in fact filed, yes.

1 THE COURT: Did it indicate
2 Mr. Hubbard's notice of alibi indicating that
3 he was with Ru-el.Sailor all night?

4 MR. WATSON: The notice of
5 alibi indicated two different places. There
6 was actually a discussion about that.

7 THE COURT: Do you have a
8 copy of that?

9 MR. WATSON: No, I didn't
10 bring that because the defense --

11 THE COURT: What did it say
12 as best you can remember?

13 MR. WATSON: What the notice
14 said they were in two places together. The
15 Benjamin's --

16 THE COURT: Say that again.

17 MR. WATSON: The Benjamin's
18 Night Club.

19 THE COURT: They -- who are
20 the people?

21 MR. WATSON: There were a
22 number of witnesses other than Ru-el.

23 THE COURT: Who was in the
24 notice of alibi?

25 MR. WATSON: Cordell, but the

1 witnesses are you saying --

2 THE COURT: No. My question
3 is, is the notice of alibi -- did Mr. Hubbard
4 file a notice of alibi saying he was with the
5 defendant, Ru-el Sailor, that night?

6 MR. WATSON: Not just one
7 witness, Your Honor.

8 THE COURT: Was that in the
9 affidavit or in the notice of alibi? That's my
10 only question.

11 MR. WATSON: Right.

12 THE COURT: Mr. Hubbard
13 listed Mr. Sailor as his alibi witness.

14 MR. WATSON: One of them.

15 THE COURT: Right, one of
16 them, okay. All right. I'm going to deny the
17 motion for a new trial based on all the
18 evidence and the applicable law. Thank you.

19 - - -

20 (Thereupon, the proceedings were concluded.)

21

22

23

24

25